IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 287 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGINISAMAJ

Versus

NALINIBEN A.BELANI AND OTHERS

Appearance:

MR KS JHAVERI for Petitioners

MR HAROOBHAI MEHTA for Respondent No. 1

MS MANISHA LAVKUMAR, A.G.P. for Respondent Nos.2,3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/03/2001

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution of India, the petitioner school management has challenged the judgement and order dated 28th December, 1990 passed by the Gujarat Secondary

Education Tribunal, Ahmedabad in Application No.274 of 1985 by which the Tribunal had issued certain directions to the petitioner-school management.

2. When the petition came up for preliminary hearing, notice was issued on 17/01/1991 and the school was granted ad-interim relief for maintaining status quo, which was continued from time to time. Thereafter while admitting the petition on 26th March, 1991 the school was granted interim stay of operation of the judgement and order under challenge and the petitioner was allowed to appoint a teacher in the Higher Secondary School as per the order of D.E.O. dated 20th January, 1986.

3. At the hearing of the petition today, Mr.K.S.Jhavari states that the school management appointed another teacher in the High Secondary School as per the order of the D.E.O. and that respondent No.1, Naliniben A. Belani was absorbed in "Sarvjanik Secondary School" at Sarkhej in Ahmedabad City-Taluka where she reported for duty on 19th July, 1991 but had contended by letter dated 20th July, 1991 addressed to the District Education Officer, Ahmedabad Rural District that her rights for absorption in the school run by the petitioner-school management may not be treated as given up by her. Mr.K.S.Jhavari seeks leave to produce the relevant documents on the record of the proceedings. The documents are taken on record.

4. It is true that respondent No.1 had submitted the aforesaid letter dated 20/07/1991 to the District Education Officer stating that she was accepting her absorption in Sarvjanik Secondary School at Sarkhej without giving up her rights which are the subject matter of the present proceedings, but considering the fact that respondent No.1 has been serving in the said Sarvajanik Secondary School since July, 1991 i.e. for the last almost 10 years and that another teacher was appointed by the petitioner school management in view of the interim relief granted by this Court in 26th March, 1991, in the facts and circumstances of the case, the Court is not inclined to disturb the arrangement which is working for the last 10 years. But it is clarified that respondent No.1 shall not be prejudiced in any respect so far as her rights for continuity of service for the purpose of pensionary and other benefits are concerned. It is directed that respondent Nos.2 and 3 shall treat respondent No.1, Naliniben A. Belani as having been in continues service and the respondent authorities shall not give respondent No.1 any break in service on account of the dispute which was the subject matter of

application No.274 of 1985 decided by the Tribunal on 28/12/1990 in favour of respondent No.1.

5. Subject to the aforesaid directions, the impugned order dated 28th December, 1990 of the Tribunal at Annexure 'G' is set aside.

Rule is made absolute to the aforesaid extent with no order as to costs. Liberty to respondent No.1 to file a fresh petition in case of any difficulty.

(M.S. Shah, J)

(Katira)